IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-JV 2006-0045
	)	DEPARTMENT B
	)	
IN RE JASEL V.	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. JV 06-069

Honorable Kimberly A. Corsaro, Judge Pro Tempore

AFFIRMED

George E. Silva, Santa Cruz County Attorney
By Marie Rios-Martinez — Nogales
Attorneys for State

Michael H. Vaughan — Tucson
Attorney for Minor

B R A M M E R, Judge.

¶1 Appellant Jasel V. appeals from the juvenile court's order dismissing without prejudice a delinquency petition the state had filed in April 2006, which charged her with disorderly conduct. Jasel contends the juvenile court erred by denying her request that the dismissal be with prejudice. We disagree and affirm.

¶2 Rule 25(B), Ariz. R. P. Juv. Ct., 17B A.R.S., sets forth time limits within which a delinquency petition must be filed. Relevant to this case, Rule 25(B)(2) provides that, if a juvenile is not being detained,

> the petition shall be filed within forty-five (45) days of submission of the referral to the prosecutor. The time for filing a petition is extended for an additional thirty (30) days pending further investigation by the prosecutor. No more than one thirty (30) day extension of time for further investigation shall be allowed except upon order of the court for good cause shown.

A juvenile may move to dismiss a petition on the ground that, "after subtracting any periods excluded pursuant to Rule 17, [applicable time limits] have been violated." Ariz. R. P. Juv. Ct. 18(C), 17B A.R.S. "If the motion to dismiss is granted, the court shall dismiss the petition without prejudice unless the court finds that the interests of justice require that the dismissal be with prejudice." *Id.*

¶3 The offense with which Jasel was charged was alleged to have occurred on February 21, 2006. The state appears to have received a referral from the juvenile probation department on February 28 and the delinquency petition was filed on April 24, an elapsed period of 55 days.[1] A preadjudicatory hearing was scheduled for June, but Jasel successfully moved to continue that hearing. On July 14, Jasel filed a motion to dismiss the petition with

[1]Neither Jasel nor the state presented testimony or admitted evidence in support of or opposition to the motion to dismiss. However, the parties do not dispute the underlying facts to any degree that would affect the outcome. We have not been asked to decide, nor do we comment on, whether time in this context must be measured from the date the probation department sends its referral to the county attorney's office or the date upon which it is received by that office. In this case, the difference appears to be one of four days but, under either calculation, the petition was filed at least ten days beyond the forty-five-day limit prescribed in Rule 25(B)(2), Ariz. R. P. Juv. Ct.

prejudice, contending the state's petition had been untimely filed. The state opposed the motion, and on August 3, after oral argument on the issue, the court dismissed the petition without prejudice.

¶4 Jasel contends the court abused its discretion by refusing to dismiss the petition with prejudice. She argues that the court applied Rules 18(C) and 25(B) incorrectly. Although the state argued below that its petition had been timely, it did not appeal from the order dismissing the petition.[2] The state urges on appeal only that we affirm the dismissal without prejudice.

¶5 "[T]he procedures followed in dismissing adult criminal prosecutions should also apply in juvenile cases." *In re Arnulfo G.*, 205 Ariz. 389, ¶ 8, 71 P.3d 916, 918 (App. 2003). Thus, this court reviews a juvenile court's order on a motion to dismiss a prosecution

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[2]Although not raised by either party, we have considered the question whether our appellate jurisdiction is appropriately triggered where the appellant complains only about a dismissal without prejudice. This court has jurisdiction over an appeal from a juvenile court order only if the order is final and the party seeking to appeal is an "aggrieved party." A.R.S. § 8-235(A). A party is "aggrieved" for appellate purposes if the order "'operate[s] to deny the party some personal or property right or to impose a substantial burden on the party.'" *In re Maricopa County Juvenile Action No. JS-5894*, 145 Ariz. 405, 408, 701 P.2d 1213, 1216 (App. 1985), *quoting In re Pima County Juvenile Action No. B-9385*, 138 Ariz. 291, 293, 674 P.2d 845, 847 (1983). It has long been settled in Arizona that the denial of a right at issue "must come as a direct result of the decree, and not merely as a result *in some other proceeding* of the application of a legal principle established in the decree appealed from." *Burmister v. City of Prescott*, 38 Ariz. 66, 69, 297 P. 443, 444 (1931). Reasonable minds may differ on whether a dismissal of a delinquency petition without prejudice fully meets this test, as it is only the state's potential to refile the petition that could deny the juvenile any right to be free of that future prosecution. Although we find this is a close issue, the broad wording of § 8-235(A) and the Division One cases *In re Timothy M.*, 197 Ariz. 394, 4 P.3d 449 (App. 2000), and *In re Charles B.*, 194 Ariz. 174, 975 P.2d 659 (App. 1998), lead us to conclude that a juvenile against whom a delinquency petition has been dismissed without prejudice is a sufficiently "aggrieved party" to challenge the dismissal order by appeal, rather than special action.

with or without prejudice for "'an abuse of discretion or for the application of an incorrect legal interpretation.'" *Id.* ¶ 7, *quoting State v. Lemming*, 188 Ariz. 459, 460, 937 P.2d 381, 382 (App. 1997). The court here neither abused its discretion nor applied an incorrect legal standard.

¶6 In 1993, Division One of this court addressed the question, "when may a juvenile court dismiss a case with prejudice?" *In re Maricopa County Juvenile Action No. JV-114857*, 177 Ariz. 337, 338, 868 P.2d 350, 351 (App. 1993). At that time, the applicable rule permitted a court to dismiss a delinquency petition with or without prejudice for a violation of the applicable time limits, *see id.*, but did not state, as Rule 18(C) now does, that a petition shall only be dismissed "without prejudice unless the court finds that the interests of justice require that the dismissal be with prejudice." Relying on essentially the same language in the analogous criminal rule and cases interpreting that language, the court stated, "[t]he primary consideration must be whether delay in prosecution will prejudice the defendant." *Maricopa County No. JV-114857*, 177 Ariz. at 339, 868 P.2d at 352. The court added that, as in adult criminal prosecutions,

> the need for finality alone is not a sufficient reason to dismiss a case with prejudice . . . . Nor can the state's attempt to avoid the running of a time limit justify a dismissal with prejudice. However, "if the defendant can show that the state delayed for the purpose of gaining a tactical advantage over him or to harass him, and if he can show that he actually suffered prejudice as a result of the state's conduct, a dismissal with prejudice would be justified."

Id., quoting State v. Garcia, 170 Ariz. 245, 248, 823 P.2d 693, 696 (App. 1991) (citations omitted); *accord Arnulfo G.*, 205 Ariz. 389, ¶ 9, 71 P.3d at 918.

¶7 Conceding that the standard for dismissing a case with prejudice is "quite stringent," Jasel maintains the standard was satisfied here. First, she essentially claims that a court must dismiss with prejudice a petition for a violation of the pre-petition time limits because the violation will always exist and "[t]he state cannot 'undo' th[at] fact." She adds that "no petition based on the original referral c[an] be filed now or at any future time" and that any refiling would be inherently unjust and constitute harassment. Next, she contends a dismissal with prejudice is required because it serves the "policies underlying" the speedy trial rules that compel prompt resolution of actions involving juveniles and protection of children by treating and rehabilitating them. Finally, Jasel suggests that a dismissal without prejudice essentially renders the time limits meaningless because it permits the state to delay prosecution, violate the time limits, and start anew by filing a new petition.

¶8 Jasel has not established the juvenile court applied an incorrect standard in ruling on his motion to dismiss; indeed, the record belies that contention. At the August 3 hearing on the motion, the court expressly referred to the rules, rejecting the state's contention that it was entitled to an additional thirty days to investigate the potential charges. The court explained to Jasel that the time limit of the rule had been violated and the petition was untimely. The court was well aware of and applied the correct standard. And, as the authority noted above establishes, Jasel's suggestion that prejudice either need not be established or essentially may be presumed is incorrect.

¶9 We also reject Jasel's related suggestion that a violation of the time limit between arrest and the filing of charges can never be cured, and therefore, a dismissal must

always be with prejudice. Rule 18 expressly gives courts the choice between a dismissal with prejudice or without prejudice for any violation of the time limits applicable to delinquency proceedings. The rules thus clearly contemplate that a petition may be refiled in appropriate circumstances. As the court recognized in *Maricopa County No. JV-114857*, "all dismissals without prejudice will have that effect." 177 Ariz. at 339, 868 P.2d at 352.

¶10 Additionally, Rule 18 would be meaningless, and the portion of it permitting a dismissal without prejudice superfluous, if all violations of Rule 25(B)(2) were presumptively prejudicial and such untimely petitions had to be dismissed with prejudice. We will not interpret a supreme court rule in a manner that renders it meaningless or superfluous. *See Bergeron ex rel. Perez v. O'Neil*, 205 Ariz. 640, ¶ 16, 74 P.3d 952, 958 (App. 2003) (in construing procedural rules promulgated by supreme court, appellate court employs traditional tools of statutory construction); *cf. Mejak v. Granville*, 212 Ariz. 555, ¶ 9, 136 P.3d 874, 876 (2006) (courts will interpret a statute "so that no provision is rendered meaningless, insignificant, or void"). And, based on the authority discussed above, Jasel's characterization of what constitutes prejudice and harassment is incorrect. *See also State v. Gilbert*, 172 Ariz. 402, 405, 837 P.2d 1137, 1140 (App. 1991) (former Rule 16.5, Ariz. R. Crim. P., 17 A.R.S., "requires a reasoned finding that the interests of justice require the dismissal to be with prejudice . . . [and] [s]etting an arbitrary time limit in the absence of circumstances demonstrating that the defendant will suffer some articulable prejudice as a result of the lapse of that period of time is less than the rule contemplates").

¶11 Nor has Jasel established the juvenile court abused its discretion. There was no evidence the state intentionally had delayed the process in order to gain a "tactical advantage over [her] or to harass [her]." *Maricopa County No. JV-114857*, 177 Ariz. at 339, 868 P.2d at 352. And Jasel never attempted to establish how she was specifically prejudiced by the untimeliness of the petition. The juvenile court found the petition was filed only ten days beyond the forty-five-day time limit. As the court observed, the breach of the limit was "minimal." Moreover, Jasel herself did not even move to dismiss the untimely petition until nearly three months after it had been filed. In the interim, she had also moved to continue her preadjudicatory hearing based on her attorney's unavailability and had waived other time limits imposed by the rules.

¶12 Jasel attempts to distinguish *Maricopa County No. JV-114857* and *Arnulfo G.*, intimating the limited circumstances justifying dismissal with prejudice they describe should be broadened when, as here, there has been an actual violation of time limits. But there is nothing in those cases to suggest that the determination of what constitutes "the interests of justice" would necessarily change when time limits have been violated. Indeed, the court articulated criteria in *Maricopa County No. JV-114857*, potentially applicable under all relevant dismissal scenarios. *Id*. Relying on *Maricopa County No. JV-114857*, 177 Ariz. at 339, 868 P.2d at 352, the court specified in *Arnulfo G.* that

> [i]n the absence of a speedy trial violation, a dismissal with prejudice would only be justified if [the] Juvenile could demonstrate that the state delayed the case for the purpose of gaining a tactical advantage over him or to harass him, and if he could show that he actually suffered prejudice as a result of the state's conduct.

205 Ariz. 389, ¶ 9, 71 P.3d at 918. Thus, we do not find either decision meaningfully distinguishable.

¶13 Finally, we summarily reject Jasel's contention that permitting the state to refile the petition after the rule has been violated thwarts the policies of expediting juvenile proceedings and rehabilitating juveniles. As the court stated in *Maricopa County No. JV-114857*, "the need for finality alone is not a sufficient reason to dismiss a case with prejudice." 177 Ariz. at 339, 868 P.2d at 352. Jasel has not persuaded us that the delay resulting from a proper application of the rules thwarts efforts to rehabilitate a minor who has yet to be adjudicated delinquent.

¶14 We affirm the juvenile court's order dismissing the delinquency petition without prejudice.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge